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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of

Entercom License, LLC

Applications for Renewal of License of Station
KDND, Sacramento, California

)
)
) MB Docket No. 16-357

) File No. BRH-20050728AUU

) File No. BRH-20130730ANM

) Facility ID # 65483

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Accepted / Filed

DEC - 8 2016

To: The Commission

Federal Communications Commission
Office of the Secretary

**OPPOSITION OF ENTERCOM LICENSE, LLC
TO PETITION FOR RECONSIDERATION**

Entercom License, LLC ("Entercom") hereby opposes the Petition for Reconsideration ("Petition") of the *Hearing Designation Order and Notice of Opportunity for Hearing*,¹ filed by Edward R. Stolz II ("Stolz").²

SUMMARY

The Commission correctly decided that Stolz is not a party in interest here. His claim of economic standing involves no new or direct competition and is purely speculative. Indeed, the core premise of his argument – that Entercom's character qualifications are an issue in the hearing – is flatly wrong. Stolz's Petition is little more than another chapter in his long history

¹ *Entercom License, LLC Applications for Renewal of License for Station KDND(FM), Sacramento, California, Hearing Designation Order and Notice of Opportunity for Hearing*, FCC 16-153 (rel. Oct. 27, 2016) ("HDO").

² Edward Stolz, Petition for Reconsideration, MB Docket No. 16-357 (Nov. 28, 2016) ("Petition").

of baseless harassment of Entercom.³ The Commission should dismiss or deny the Petition and Stolz should not be permitted to participate in the hearing.

DISCUSSION

Stolz seeks reconsideration of the Commission's decision not to grant him party in interest status for purposes of the hearing regarding the above-captioned pending renewal applications for FM Broadcast Station KDND, Sacramento, California.⁴ The Petition does not challenge the HDO's conclusion that Stolz lacks "listener standing."⁵ The Petition rests exclusively instead on a claim that the Commission improperly "overlooked other facts" that allegedly accord Stolz economic standing in this matter.⁶ Specifically, Stolz argues that his pending case involving the past assignment of a different radio station license, KUDL, formerly KWOD (hereinafter "KUDL"), held by Entercom⁷ gives him economic standing to participate in this proceeding.⁸ Stolz asserts that the Commission "lacks the discretion to deny Stolz party in interest status" because the KDND license renewal hearing could result in the Commission disqualifying Entercom as a broadcast licensee and the KUDL license would ultimately have to be returned to Stolz.⁹ Stolz is incorrect.

To begin, Stolz's complaint that the Commission improperly "overlooked" facts proving his economic standing is without merit. The burden is on Stolz, as the petitioner, to demonstrate

³ It bears noting that Stolz has previously been declared a "vexatious litigant" by a California court. *Stolz v. KROY 96.9 FM Radio* (Super. Ct. Sacramento County, 1990, No. CV516026) (cited by *Stolz v. Bank of America*, 15 Cal. App. 4th 217, 220 (1993)).

⁴ HDO ¶ 23.

⁵ *Id.*

⁶ See Edward Stolz, Petition to Deny (Nov. 1, 2013) ("2013 Petition"); see also 47 U.S.C. § 309(d) (only a "party in interest" has standing to file a petition to deny).

⁷ *Stolz v. FCC*, Case No. 16-1248 (D.C. Cir 2016).

⁸ Petition at 2.

⁹ *Id.* at 4, 5.

standing¹⁰ and it is not incumbent upon the Commission to sort through his pleadings to find a basis for standing.¹¹ In any event, Stolz does not meet the standard for economic standing.

Under longstanding Commission precedent, economic standing can be found only by reason of “direct competitive injury” or other likely financial injury.¹² Further, the alleged financial injury must be caused by a “direct and current competitor” and must be concrete.¹³ Simply put, the alleged injury must involve “*substantial aggrievement* or interests *substantially affected*.”¹⁴ Stolz’s claim of economic standing fails even to come close to satisfying these basic standards.

¹⁰ See *KERM, Inc. v. FCC*, 353 F.3d 57, 59-60 (D.C. Cir. 2004) (citing *New World Radio, Inc. v. FCC*, 294 F.3d 164, 170 (D.C. Cir. 2002) and *Huddy v. FCC*, 236 F.3d 720, 722 (D.C. Cir. 2001)) (“A petitioner bears the burden of establishing its standing. ... both listeners and competitors may, in appropriate cases, demonstrate standing to challenge actions of the FCC under the Communications Act.”).

¹¹ The Petition is also untimely. Stolz’s economic standing argument could have been made in his 2013 Petition to Deny Entercom’s above-captioned 2013 renewal application (or in his Reply to Entercom’s challenge to his standing to file that pleading), but it was not, and the Petition provides no basis for consideration of that argument in the first instance on reconsideration. See 47 C.F.R. § 1.106(c)(1)-(2).

¹² See, e.g., *Clarksburg Publishing Co. v. FCC*, 225 F.2d 511, 514 n.8 (D.C. Cir. 1955); *Metropolitan Television Co. v. United States*, 221 F.2d 879, 881 (D.C. Cir. 1955) (cited by *Elm City Broadcasting Corp. v. United States*, 235 F.2d 811, 815 (D.C. Cir. 1956)) (“KOA’s loss of listeners will impair its competitive position as to all its competitors in the area, including the Denver Post, and economic injury will result.”).

¹³ *KERM*, 353 F.3d at 60-61 (citing *FCC v. Sanders Bros. Radio Station*, 309 U.S. 470, 477 (1940); *New World Radio*, 294 F.3d at 170) (“*KERM* fares no better under a theory of competitor standing. A party seeking to establish standing on this basis must demonstrate that it is ‘a direct and current competitor whose bottom line may be adversely affected by the challenged government action.’ While a party that is ‘likely to be financially injured’ by a Commission decision may have competitor standing to challenge Commission actions under the Act, that party must make a concrete showing that it is in fact likely to suffer financial injury as a result of the challenged action.”).

¹⁴ *Red River Broadcasting Co. v. FCC*, 267 F.2d 653, 654 (D.C. Cir. 1959) (emphasis added) (citation omitted).

Stolz's claim of economic injury is highly contingent and speculative. It has no basis in direct or current competition. Essentially, Stolz is arguing that (1) *if* Entercom is found to be disqualified to hold the KDND license in this hearing, (2) the Commission *could* sanction the entire Entercom broadcast group, rendering it disqualified to hold the license for a different station – KUDL – and (3) his pending appeal involving the KUDL license, where Stolz has heretofore lost at every turn,¹⁵ *could then* result in that license devolving to him.¹⁶ Stolz then strains this twisted chain of logic to the breaking point by concluding that he will therefore suffer economic injury if Entercom is found to be *qualified* to hold the KDND license.

This string of supposition is on its face too speculative to support a finding of economic standing in this case. This conclusion is confirmed by the fact that the HDO expressly declined to designate a character qualification issue for hearing.¹⁷ In other words, because the question of whether Entercom is or is not qualified to be a Commission licensee is not even at issue, the first link in Stolz's logic necessarily fails.¹⁸

The precedent cited by Stolz, *Elm City Broadcasting Corp.*,¹⁹ does not support a contrary conclusion. In *Elm City*, the court found the Commission lacked the authority to deny a petition

¹⁵ See, e.g., *Royce International Broadcasting Company and Entercom Communications Corp., Application for Assignment of License of Station KUDL(FM), Sacramento, California*, Memorandum Opinion and Order, 31 FCC Rcd 7439 (2016), *appeal docketed*, *Stolz v. FCC*, Case No. 16-1248 (D.C. Cir 2016).

¹⁶ Petition at 3-4.

¹⁷ HDO ¶ 30 n.122 (“As noted above, MAC in its Petition and Edward Stolz in his Reply each request that the Commission designate a character issue against Entercom. We decline to do so.”).

¹⁸ The issues designated for hearing relate to whether Entercom “operated Station KDND(FM) in the public interest.” *Id.* ¶ 83(h).

¹⁹ *Elm City Broadcasting*, 235 F.2d at 816.

for intervention by an “undoubted party in interest.”²⁰ In that case, the party claiming economic standing was an existing licensee in the same service area who alleged interference from the other applicants’ proposed stations.²¹ In other words, *Elm City* involved a claim of economic standing by a direct competitor who alleged actual and concrete harm – RF interference. By contrast, Stolz’s claim of economic injury is highly speculative and is not the result of direct and current competition. In short, *Elm City* has no bearing on this case.

CONCLUSION

For the foregoing reasons, the Commission should dismiss or deny the Petition and Stolz should not be permitted to participate in the hearing.

Respectfully submitted,
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December 8, 2016

²⁰ *Id.* at 817.

²¹ *Id.* at 814.

CERTIFICATE OF SERVICE

I, Paula M. Lewis, do hereby certify that, on this 8th day of December, 2016, the foregoing Opposition of Entercom License, LLC to Petition for Reconsideration was served by first-class mail, postage prepaid and by e-mail, except as otherwise indicated below, on the following persons:

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